

## **MILITARY CONTINGENCY OPERATIONS AND LAW ENFORCEMENT LEAVE OF 22 DAYS**

Section 1113 of the National Defense Authorization Act for Fiscal Year 2004, Public Law 108-136, modified 5 USC §6323. Effective November 24, 2003, civilian employees who are members of the Reserves or National Guard and who have been called to active duty in support of a contingency operation as defined in 10 USC §101(a)(13) are entitled to 22 additional days of military leave each calendar year. This entitlement is a broadening of the qualifications for use of military leave under 5 USC §6323(b)(2)(A) which was formerly limited to personnel called to active duty for law enforcement duty. While performing such duty, the individual will receive both military pay and civilian pay for the 22 days. Unlike the 120 hours of military leave for active duty under 5 USC §6323(a), **the individual is not authorized to retain both payments for the additional 22 days of military leave.** As outlined in 5 USC §5519, military pay received, other than travel, transportation or per diem, must be credited against the pay the individual received from his or her civilian position.

The Comptroller General of the United States has issued extensive guidance concerning how military pay amounts received while on leave under 5 USC §6323 (b) must be credited against the civilian pay. These instructions may be found in 49 Comp. Gen. 233 (1969). In summary, the Comptroller General Decision states that the gross amount of military pay received on a day on which an employee is excused from civilian duty for leave under 5 USC §6323 should be deducted from the civilian compensation for the excused period. However, the employee may retain that portion of the military pay that exceeds the civilian compensation for any day or part of a day on which leave is granted. Any civilian pay adjustments due to the offset of military pay are returned to the appropriation from which the civilian pay was paid.

General guidelines applicable to determining an employee's entitlement are contained on subsequent pages. Sample pay computations are provided in examples 1 through 4 to display the basic calculations and comparisons between civilian and military pay for various work schedules. The computation of offsetting amounts in these examples were developed to avoid a disparity in benefits for employees who work five 8-hour day tours of duty and those who work uncommon tours of duty. Examples 5 through 8 show more extensive detail to display what occurs in the Defense Civilian Pay System (DCPS) to adjust taxes and other payroll deductions.

Assuming no law enforcement leave was used prior to November 24, 2003, personnel serving on active duty in support of a contingency operation between November 24, 2003, and December 31, 2003 are entitled to 22 additional days of military leave for calendar year 2003. The entitlement for calendar year 2004, is 22-days of either or a combination of military contingency operations and law enforcement leave. Employees who have not previously requested the prior year (2003) 22-days leave and

who maybe due civilian pay for this period will have the civilian pay reflected on their 2004, IRS form W-2.